THE LAW SCHOOL.

IN THE CLUB COURTS.

SUPREME COURT OF THE POW-WOW.

Insurance. Right of insurer to assignment of mortgage debt.

The defendant was mortgagee of Jones, for a house of the value of $1,000. The plaintiffs were insurers of said house for the defendant, in the sum of $1,000. The mortgage debt was also $1,000. The house was subsequently destroyed by fire, and the plaintiffs, having paid the insurance money, bring this action to obtain from the defendant an assignment of his mortgage interest. The defendant had made the insurance in his own name without describing his interest as that of a mortgagee, and paid the premiums out of his own funds.

On these facts the court held for the plaintiff, on the following reasoning: There were in this case two separate contracts, — the mortgage debt and the policy of insurance. But they must be looked at together, in the light of the peculiar law of insurance, which says that a person who has been subjected to a loss of property by fire shall be indemnified. The defendant has been indemnified by the payment of the insurance money, which is the equivalent of his mortgage debt. If he is also allowed to retain the debt he will eventually have obtained double satisfaction, which would not only be in violation of the indemnity principle of the law of fire insurance, but would be placing a premium on incendiarism.

Now, the insurer of a person who has a remedy against some one to compel him ultimately to make good the loss stands in the position of a surety. *Darrell* v. *Tibbitts*, 5 Q. B. Div. 560. Though the mortgagee by the fire loses the security for the debt, and not the debt, yet as the ultimate object in view was the insurance of the debt, accomplished by means of insuring its security, payment of the insurance money places him in the same position as though he had lost the property through redemption. He having thus been indemnified, the insurer should succeed to his rights against the mortgagor, in order that the loss may be placed where it belongs. *Darrell* v. *Tibbitts*, 5 Q. B. Div. 560; *Smith* v. *Columbia Ins. Co.*, 17 Pa. St. 253; *Honore* v. *Lamar Ins. Co.*, 51 Ill. 409; *Norwich Ins. Co.* v. *Boomer*, 52 Ill. 442; *Sussex Ins. Co.* v. *Woodruff*, 2 Dutcher, 541; *Excelsior Ins. Co.* v. *Royal Ins. Co.*, 55 N. Y. at 359. The only decisions *contra* are in Massachusetts.

It may be objected that the mortgagee has lost his premiums; this is certainly true; but if his debt was a good one he could have no object in insuring, except as a speculation, which the law does not allow. If he chose to insure the house as a security for his debt, rather than trust solely to the mortgagor's solvency, there is no reason why he should reap the benefit of such insurance without paying for it.

SUPREME COURT OF THE THAYER.

Same case as the preceding.

The facts were identical with those in the preceding case; but the court reached an opposite conclusion, in favor of the defendant, on the following grounds: The right claimed by the company in this case cannot